

15 JAN 2004



UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS  
UNITED STATES PATENT AND TRADEMARK OFFICE  
P.O. Box 1450  
ALEXANDRIA, VA 22313-1450  
www.uspto.gov

#17

V. Randall Gard  
Carr & Ferrell, LLP  
2200 Geng Road  
Palo Alto, CA 94303

1/15/04

In re Application of  
HERSH, et al.  
Application No.: 09/701,797  
PCT No.: PCT/US99/12433  
Int. Filing Date: 03 June 1999  
Priority Date: 03 June 1998  
Attorney Docket No.: PA1675US  
For: METHOD FOR INCREASED CONCURRENCY  
IN A COMPUTER SYSTEM

DECISION ON RENEWED  
PETITION UNDER  
37 CFR 1.137(b) AND 1.42  
AND PETITION UNDER  
37 CFR 1.181

This decision is in response to applicant's "Supplement to Renewed Petitions Under 37 CFR 1.47(a) and 1.137(b)" filed 19 December 2003 and "Renewed Petitions Under 37 CFR 1.47(a) and 1.137(b)" filed 13 January 2004 in the United States Patent and Trademark Office (USPTO). The 13 January 2004 filing is being treated as a petition under 37 CFR 1.181. No petition fee is due.

#### BACKGROUND

On 25 July 2003, applicant was mailed a decision dismissing applicant's petitions under 37 CFR 1.47(a) and 37 CFR 1.137(b). Applicant was afforded two months to file any request for reconsideration.

On 19 December 2003, applicant filed a "Supplement to Renewed Petitions Under 37 CFR 1.47(a) and 1.137(b)" referencing a previously filed renewed petition purportedly filed 25 September 2003.

On 13 January 2004, applicant filed a true and complete copy of the "Renewed Petitions Under 37 CFR 1.47(a) and 1.137(b)" originally filed 25 September 2003 along with a stamped postcard. Pursuant to 37 CFR 1.181 applicant has provided sufficient proof to show that the renewed petitions were in fact originally filed 25 September 2003 and were thus a timely response to the decision mailed 25 July 2003. (See discussion below).

## DISCUSSION

### **I. Petition Under 37 CFR 1.181**

The best evidence of what was actually received by the Office is a postcard receipt containing a specific itemization of all the items being submitted. See MPEP 503. Here, applicant has provided a copy of the date-stamped postcard receipt. The postcard identifies the application by applicant, application number and docket number. Among the items listed on the receipt is "Renewed Petitions Under 37 CFR 1.47(a) and 1.137(b)." The receipt is stamped "DT02 Rec'd PTO/PCT 25 SEP 2003." Thus, it is clear that applicant filed a renewed petition on 25 September 2003. As such, it is proper to accept the facsimile version filed on 13 January 2004 as a timely response to the decision mailed 25 July 2003. Thus, it is proper to grant applicant's petition under 37 CFR 1.181.

### **II. Renewed Petitions Under 37 CFR 1.137(b) 37 CFR 1.42**

As detailed in the decision mailed 25 July 2003, a petition under 37 CFR 1.137(b) requesting that the application be revived on the grounds of unintentional abandonment must be accompanied by (1) the required reply, (2) the petition fee required by law, (3) a statement that the, "entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to this paragraph was unintentional" and (4) any terminal disclaimer and fee pursuant to 37 CFR 1.137(c) (where required). Applicant previously satisfied items (2), (3) and (4) above.

Regarding item (1), applicant has presently filed a combined declaration and power of attorney executed by Dominic Gaeta as legal representative to the estate of the deceased co-inventor, Herbert Sullivan. As detailed in 37 CFR 1.42, "In case of the death of the inventor, the legal representative (executor, administrator, etc.) of the deceased inventor may make the necessary oath or declaration, and apply for and obtain a patent." Applicant has presently provided a compliant combined declaration and power of attorney thus satisfying item (1) above. Further, a review of the application file reveals that all of the requirements of 35 U.S.C. 371 for entry into the national stage in the United States have now been satisfied.

## CONCLUSION

Applicant's petition under 37 CFR 1.181 is **GRANTED**.

Applicant's renewed petitions under 37 CFR 1.137(b) and 37 CFR 1.42 are **GRANTED**.

This application will be given an international application filing date of 03 June 1999 and a date of **19 December 2003** under 35 U.S.C. 371.

This application is being returned to the DO/EO/US for processing in accordance with this decision.



Derek A. Putonen  
Attorney Advisor  
Office of PCT Legal Administration  
Tel: (703) 305-0130  
Fax: (703) 308-6459